

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NINO MARTINENKO, on behalf of herself
and others similarly situated,

CASE NO. 22 CV 518

Plaintiff,

v.

212 STEAKHOUSE, INC., and NIKOLAY
VOLPER,

Defendants.

DECLARATION OF MICHAEL DIGIULIO

Michael DiGiulio declares under penalty of perjury pursuant to 28 U.S.C. § 1745 that:

1. I submit this declaration in support of Plaintiffs' Motion Summary Judgment under Federal Rule of Civil Procedure 56.

2. I am an attorney with Joseph & Kirschenbaum LLP ("JK"), class counsel in this action. I am familiar with the facts and circumstances set forth herein.

3. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the October 6, 2022 deposition of Defendant Nikolay Volper, who was testifying on behalf of himself and on behalf of Defendant 212 Steakhouse, Inc., under Federal Rule of Civil Procedure 30(b)(6) in the above captioned case.

4. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the December 20, 2022 deposition of Plaintiff Nino Martinenko in the above-captioned case.

5. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the transcript of the December 20, 2023 deposition of Opt-In Plaintiff Daghmara Huk in the above-captioned case.

6. Attached hereto as **Exhibit 4** is a true and correct copy of Plaintiffs' First Request for the Production of Documents served on Defendants on April 7, 2022.

7. Attached hereto as **Exhibit 5** is a true and correct copy of Defendants' Responses & Objections to the Plaintiff's First Request for the Production of Documents to All Defendants served on Plaintiff on July 12, 2022.

8. Attached hereto as **Exhibit 6** are true and correct copies of all of the wage statements/paystubs for Plaintiff Martinenko that Defendants produced in this litigation. These documents bear Bates numbers D934-D1012.

9. Attached hereto as **Exhibit 7** are true and correct copies of all of the wage statements/paystubs for Opt-In Plaintiff Huk that Defendants produced in this litigation. These documents bear Bates numbers D883-D933. Huk's wage statement dated August 24, 2020 is the earliest wage statement that Defendants have produced.

10. Attached hereto as **Exhibit 8** are true and correct copies of excerpts from the 2016 New York State Wage Hospitality Order.

11. Attached hereto as **Exhibit 9** is a true and correct copy of the December 9, 2022 Declaration of Plaintiff Nino Martinenko.

12. Attached hereto as **Exhibit 10** is a true and correct copy of the December 9, 2022 Declaration of Opt-In Plaintiff Dagmara Huk.

13. Attached hereto as **Exhibit 11** is a true and correct copy of the complaint in the lawsuit entitled *Luis Quizhpi v. 212 Steakhouse, Inc., and Nikolay Volper*, filed on December 14, 2018.

14. Attached hereto as **Exhibit 12** is a true and correct copy of the complaint in the lawsuit entitled *Julio De La Luz Flores v. 212 Steakhouse, Inc. and Nikolay Vopler*, filed against Defendants on August 31, 2020.

15. Attached hereto as **Exhibit 13** is a true and correct copy of payroll

documents produced in this litigation by Plaintiff Martinenko bearing Bates numbers Plaintiff0025-Plaintiff0043. This exhibit was marked as Exhibit 5 in the October 6, 2022 deposition of Defendant Nikolay Volper.

16. Defendants did not produce any wage statements for any Class Members other than for Plaintiff Martinenko and Opt-In Plaintiff Huk.

17. Class Counsel distributed the Court authorized Class Notice to all individuals identified in the Class List that Defendants provided to Class Counsel.

18. At the close of the Class notice period, 34 individuals from the Class List did not opt out of the Class, including Barbara Laluz.

19. Defendants provided Barbara Laluz's name and contact information in the original Class List but have subsequently taken the position that Ms. Laluz never worked at 212 Steakhouse and should not be included in the Class.

20. Defendants have not provided any payroll or time records related to Ms. Laluz's employment.

21. There are 33 Class Members for whom Defendants have produced time records.

22. Plaintiffs move for summary judgment on behalf of the 33 Class Members for whom Defendants produced time records.

Dated: New York, New York
November 16, 2023

JOSEPH & KIRSCHENBAUM LLP

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